

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 808 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A V BABARIA

Versus

STATE OF GUJARAT & ANR

Appearance:

MR UTPAL M PANCHAL for Petitioner

MR HL JANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/97

ORAL JUDGMENT

The petitioner, a Quality Control Inspector in the department of Agriculture , State of Gujarat, filed this Special Civil Application and prayer has been made for quashing and setting aside the seniority list, annexure 'A'.

2. The petitioner prays that his name should have been placed in the seniority list at Sr.No.259 and not at

Sr.No.423. Annexure 'A' is the seniority list of the Gujarat Agricultural Service, Class II Officers. The petitioner has been promoted to the Class II post on 24th November 1971 and has been given seniority in the aforesaid cadre from the said date. The other persons, namely Shri D.G. Patel and Shri A.B. Patel were placed in the said seniority list at Sr.No.258 and 259 respectively as they were promoted in the cadre of Gujarat Agricultural Services Class II on 1st July 1966 and 12th July 1966 respectively. The grievance of the petitioner is that these persons were appointed on the post of Agricultural Supervisor in the one and same selection and in the order of merits in the said category, the petitioner was immediately below Shri A.B. Patel. The grievance of the petitioner is that in the year 1966 when the aforesaid two persons were given promotion in the cadre of Gujarat Agricultural Services Class II, he has been superseded without there being any justification. The petitioner made a statement in the Special Civil Application that he was not served with any adverse remarks in his service record and as such, his supersession over these two persons is wholly arbitrary and unjustified. It is also contended that in the department where the petitioner was on deputation he was promoted in the grade of officer of the Agricultural Services Class II, but in the parent department while making promotion, he has been arbitrarily superseded.

3. The reply to the Special Civil Application has not been filed and as such the contention of the petitioner that he has not been served with any adverse remarks, stands uncontroverted. Therefore, the averment of the petitioner that no adverse remarks were communicated to him regarding his confidential report, has to be accepted. So the supersession of the petitioner in the year 1966 in the matter of promotion to the post of Agricultural Services Class II is wholly arbitrary and unjustified, and as such it cannot be allowed to stand.

4. The seniority is only consequential of the date of promotion. The petitioner has already been promoted to the post of Gujarat Agricultural Services Class II post and as such it is only a case of considering his case afresh as if there is no adverse remarks in the service record of petitioner, for promotion to the post of Gujarat Agricultural Services Class II with effect from the date on which two other persons named above have been promoted. This exercise has to be undertaken by the respondent within a period of three months from the date of receipt of certified copy of this order. In case the

petitioner is found suitable for promotion, he shall be entitled for the deemed date of promotion. However he will not be entitled for actual benefits of promotion. The petitioner should be given notional benefits and the seniority.

5. The Special Civil Application is allowed in aforesaid terms. Rule made absolute accordingly. No order as to costs.

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